

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HOMESITE INSURANCE COMPANY, a  
Wisconsin stock insurance corporation,

Plaintiff,

v.

JOSEPH M. ZAJAC, a Washington resident;  
SUSAN P. ZAJAC, a Washington resident; THE  
JOSEPH M. ZAJAC AND SUSAN P. ZAJAC  
TRUST DATED APRIL 12, 2017, a Washington  
trust, WILLIAM FELDMANN, a Washington  
resident, and JANET FELDMANN, a  
Washington resident,

Defendants.

NO. 2:19-cv-01034 TSZ

**STIPULATED MOTION AND  
ORDER FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT**

**I. STIPULATED MOTION**

The parties hereto, Plaintiff Homesite Insurance Company (hereinafter “Homesite), Defendants Joseph M. Zajac, Susan P. Zajac (collectively the “Zajacs”), and the Joseph M. Zajac and Susan P. Zajac Trust Dated April 12, 2017 (the “Trust”), and Defendants William Feldmann and Janet Feldmann (collectively the “Feldmanns”), by and through their undersigned counsel of record, submit this Stipulated Motion for Leave to permit Homesite to file its Second Amended Complaint. As required by LCR 15, the proposed Second Amended Complaint is attached hereto as **Exhibit 1**.

This is an insurance coverage dispute between Homesite and the Zajacs for claims arising out of alleged misrepresentations made by the Zajacs in connection with the sale of real property

1 to the Feldmanns. On or about March 14, 2019, the Feldmanns filed a complaint against the  
 2 Zajacs in King County Superior Court, captioned as *William and Janet Feldmann v. Joseph M.*  
 3 *and Susan P. Zajac and The Joseph M. Zajac and Susan P. Zajac Trust Dated April 12, 2017*,  
 4 Case No. 19-2-07340-3 SEA (hereinafter “Underlying Lawsuit”). In the Underlying Lawsuit,  
 5 the Feldmanns allege that the Zajacs failed to disclose material facts regarding the property on  
 6 the Property Disclosure Form and asserted claims against the Zajacs and the Trust for negligent  
 7 misrepresentation, fraudulent misrepresentation, and unjust enrichment.

8 Homesite filed this action on July 3, 2019, seeking a declaratory judgment from this  
 9 Court that there is no coverage under the Zajacs’ homeowner’s insurance policy for any claims  
 10 asserted against them in the Underlying Lawsuit. The Feldmanns then filed an amended  
 11 complaint in the Underlying Lawsuit on September 20, 2019, to add a cause of action for  
 12 fraudulent concealment against the Zajacs. Homesite amended its complaint in the present  
 13 lawsuit to add the newly alleged claim in the Underlying Lawsuit of fraudulent concealment to  
 14 the claims for declaratory judgment in this lawsuit.

15 Defendant Susan Zajac answered Homesite’s Second Amended Complaint and asserted  
 16 counterclaims against Homesite alleging that Homesite breached the insurance contract and  
 17 violated RCW 48.30.015, by failing to assign separate defense counsel for the Trust.<sup>1</sup>  
 18 Accordingly, Homesite seeks to amend its complaint to add a claim for declaratory judgment on  
 19 the issue of whether the Trust and its trustees are “an Insured” under the Policy and entitled to  
 20 defense and indemnity coverage for the alleged damages sought by the Feldmanns in the  
 21 Underlying Lawsuit.

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<sup>1</sup> Dkt. 20 at 16-17.

It is hereby stipulated by and between the parties, that Homesite may file the attached  
Second Amended Complaint.

DATED this 30th day of April, 2020.

s/ Eliot M. Harris

Eliot M. Harris, WSBA No. 36590

s/ Erin J. Varriano

Erin J. Varriano, WSBA No. 40572

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Zajac Trust Dated April 12, 2017*

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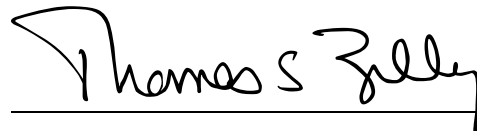
**ORDER**

The parties' Stipulated Motion for Leave to File Second Amended Complaint, docket no. 22, is GRANTED.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff, Homesite Insurance Company, is granted leave to amend its complaint;
2. Plaintiff's Second Amended Complaint shall be filed with the Court within three (3) days after entry of this order; and
3. Defendants will have fourteen (14) days from the filing of Plaintiff's Second Amended Complaint to provide their answers or otherwise respond.

DATED this 1st day of May, 2020.



Thomas S. Zilly  
United States District Judge

**PRESENTED BY:**

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s/ Erin J. Varriano  
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6 *Joseph M. Zajac and Susan P. Zajac Trust Dated*  
7 *April 12, 2017*

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